99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-732

PROVIDING FOR THE CONSIDERATION OF H.R. 4428

JULY 31, 1986.—Referred to the House Calendar and ordered to be printed

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Mr. PEPPER, from the Committee on Rules, submitted the following

REPORT

[To accompany H. Res. 523]

The Committee on Rules, having had under consideration House Resolution 523, by nonrecord vote, report the same to the House with the recommendation that the resolution do pass.

The following is the text of an amendment made in order under House Resolution 523.

AN AMENDMENT TO BE OFFERED BY MR. MAVROULES OF MASSACHUSETTS OR HIS DESIGNEE

Page 182, strike out line 16 through 22 and insert in lieu thereof the following:

"(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

"(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a representative of the contracting officer designated by the contracting officer for the purposes of the negotiation of the contract); or

"(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

Page 208, after line 4, insert the following new subsection (and redesignate the succeeding subsection accordingly):

"(e) JUDICIAL REVIEW.—

"(1) RIGHT OF REVIEW.—(A) A member of an armed force aggrieved by a final order of the Board may obtain judicial review of the order by filing a petition for review before the end of the 60-day period beginning on the later of—

"(i) the date the member received notice of the order of the Board; or

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"(ii) the date on which the member was deemed to have exhausted administrative remedies under subsection (d)(3).

"(B) A petition for review under subparagraph (A) shall be filed with the United States Court of Appeals—

"(i) for the circuit in which the member resides;

"(ii) for the circuit in which the member is stationed; or

"(iii) in the Court of Appeals for the District of Columbia.

"(2) REVIEW OF RECORD.—With respect to any case for which a petition for review is filed under paragraph (1)(A), the court—

"(A) shall review the record; and

"(B) in any case in which it determines that the record fails to resolve significant issues of fact, may refer the case to the appropriate United States district court for a hearing de novo.

"(3) STANDARD OF REVIEW.—The court shall set aside any order of the Board that, upon completion of a review under paragraph (2), is determined to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

"(B) not supported by substantial evidence.

"(4) ATTORNEYS FEES.—If, upon completion of a review under paragraph (2), the court finds that the claim of the member is meritorious, the court shall award such member reasonable attorneys fees and costs.

Strike out section 923 (page 212, lines 14 through 19) and redesignate the following sections accordingly.

At the end of title IX of division A (page 214, after line 18), insert the following new sections:

SEC. 925. CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.

(a) IN GENERAL.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new sections:

"§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

"(a)(1) Any person—

"(A) who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(B) who, during the two-year period preceding the person's separation from service in the Department of Defense, participated personally and substantially, and in a manner involving decisionmaking responsibilities, in a procurement function with respect to a contract through contact with the contractor,

may not accept compensation from that contractor for a period of two years following the person's separation from service in the Department of Defense.

"(2) In paragraph (1), the term 'decisionmaking responsibilities' includes the following activities with respect to a contract: approval or disapproval, or making recommendations or engaging in negotiations, with regard to a procurement function.

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"(3) For purposes of paragraph (1), whether or not a person is a contractor (as defined in subsection (f)(2)) is determined as of the date of the separation from service of the officer or employee of the Department of Defense or member of the armed forces involved.

"(4) Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(5) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(b)(1) This section applies only to—

"(A) civilian positions for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS–13 of the General Schedule; and

"(B) to positions held by members of the armed forces in a pay grade of O–4 or higher.

"(2)(A) When a vacancy occurs in a sensitive civilian procurement executive position, the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, may exempt the person appointed to fill the vacancy from the provisions of subsection (a) by reason of service in such position.

"(B) For purposes of subparagraph (A), a sensitive civilian procurement executive position is a position—

"(i) which is identified under paragraph (1);

"(ii) which is a civilian position to which a person is appointed by the President, by and with the advice and consent of the Senate; and

"(iii) with respect to which the Secretary of Defense determines that the duties inherent in the position involve personal and substantial participation in procurement functions (to the extent to which subsection (a)(1) applies) with so many contractors that implementation of subsection (a) with respect to persons serving in the position would seriously hamper the ability of the Department of Defense to obtain the services of a highly qualified person to serve in the position.

"(C) An exemption granted under this paragraph shall not apply to the extent that the person granted the exemption acts as a government representative in the negotiation or settlement of a contract with a contractor.

"(D) Whenever the Secretary of Defense grants an exemption under this paragraph, the Secretary shall promptly submit to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and the Judiciary of the House of Representatives a report describing the exemption and setting forth the specific reasons for the exemption.

"(c) The Secretary of Defense shall provide to each person separated from service in the Department of Defense in a position described in subsection (b)(1) who, within the two years preceding the date of such separation, participated in a procurement function of the Department a notice with respect to this section. Such notice shall include—

"(1) a written explanation of the provisions of this section; and

"(2) the name of each contractor from whom such person is prohibited from accepting compensation under this section.

"(d) This section does not apply—

"(1) to a contract for an amount less than $100,000;

"(2) to compensation of a person by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the person participated personally and substantially in a procurement function (to the extent to which subsection (a)(1) applies) with respect to a contract with that entity; or

"(3) to a contractor that was awarded contracts by the Department of Defense during the preceding fiscal year in a total amount less than $100,000.

"(e)(1) A person who is considering the propriety of accepting compensation that might place the person in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

"(2) An application under paragraph (1) shall contain such information as the Director requires.

"(f) In this section:

"(1) The term 'compensation' includes any payment, gift, benefit, reward, favor, or gratuity—

"(A) which is provided, directly or indirectly, for services rendered; and

"(B) which is valued in excess of $250 at the prevailing market price.

"(2) The term 'contractor' means—

"(A) a person that contracts to supply the Department of Defense with goods or services; and

"(B) a person that controls, is controlled by, or is under common control with, a person described in subparagraph (A).

Such term does not include a State or local government or an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"(3) The term 'procurement function' includes, with respect to a contract, any function relating to—

"(A) the negotiation, award, administration, or approval of the contract;

"(B) the selection of a contractor;

"(C) the approval of changes in the contract;

"(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

"(E) the management of the procurement program.

"(4) The term 'armed forces' does not include the Coast Guard.

"(g) For the purposes of this section and section 2397c of this title, a member or former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the member's discharge or release from active duty.

"§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

"(a)(1) With respect to a contractor that during a fiscal year enters into contracts with the Department of Defense for the procurement of goods and services in amounts aggregating $100,000 or more, each contract for procurement of goods or services entered into by the Department with that contractor during the next fiscal year shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

"(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

"(A) $100,000; or

"(B) three times the compensation paid by the contractor to the person in violation of such contract provision.

"(b)(1)(A) Each contractor subject during a calendar year to a contract term described in subsection (a) shall submit to the Secretary of Defense not later than April 1 of the next year a report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

"(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(ii) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

"(B) Each such listing shall—

"(i) show each agency in which the person was employed or served on active duty during the last two years of the person's service in the Government;

"(ii) show the person's job titles during the last two years of the person's service in the Government;

"(iii) contain a full and complete description of the duties of the person during the last two years of such service; and

"(iv) contain a description of the duties (if any) that the person is performing on behalf of the contractor.

"(2) A person who knowingly fails to file a report required by paragraph (1) shall be fined not more than $10,000.

"(3) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of paragraph (1) or section 2397b(a) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

"(c)(1) The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (b)(1) and shall conduct an annual random review of the reports for violations of section 2397b(a) of this title and subsections (a) and (b)(1).

"(2) Not later than October 1 of each year, the Director shall submit to Congress a report on the operation of this section. Each such report shall include the findings of the Director based on the examination of reports for the preceding calendar year.

"(d) This section does not apply to a contract for an amount less than $100,000.

"(e) The definitions set forth in section 2397b(f) of this title apply to this section.".

(2) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by inserting after the item relating to section 2397a the following new items:

"2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors.
"2397c. Defense contractors: requirements concerning former Department of Defense officials.".

(b) REPEAL.—Effective on the effective date of this section, section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note) is repealed.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraphs (1) and (2), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

(2) EFFECTIVE DATE FOR REGULATORY AUTHORITY.—Subsection (b) of section 2397b of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act. The Secretary of Defense shall prescribe and publish in the Federal Register regulations under that subsection not later than 180 days after such date.

(3) EFFECT ON EMPLOYMENT.—(A) The amendments made by this section—

(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.

(4) EFFECTIVE DATE FOR REPORTING REQUIREMENT.—The first report under section 2397c(c)(2) of title 10, United States Code, as added by subsection (a), shall be submitted not later than October 1, 1987.

SEC. 926. REQUIREMENTS RELATING TO UNDEFINITIZED CONTRACTUAL ACTIONS.

(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) LIMITATION ON USE OF FUNDS.—(A) On the last day of a fiscal quarter during a covered fiscal year, the amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the

Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the amount of funds represented by all contractual actions entered into by the Secretary during such period.

(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the end of the following quarter.

(2) QUARTERLY REPORTS TO DEFENSE COMMITTEES.—(A) During each covered fiscal year, the Secretary of Defense and the Secretaries of the military departments shall each submit to the defense committees a report at the end of each fiscal year quarter concerning—

(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were entered into during the reporting period with respect to the month for which the report is submitted; and

(ii) the amount of such funds represented by undefinitized contractual actions.

(B) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is submitted.

(C) The first reports required by subparagraph (A) shall be with respect to the fiscal year quarter ending on December 31, 1986.

(3) DETERMINATION OF AMOUNTS OF CONTRACTUAL ACTIONS.—For purposes of this section, the amount of funds represented by a contractual action shall be—

(A) the contractual price; or

(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

(4) DEFINITIONS.—For purposes of this subsection:

(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(C) The term "reporting period" means, with respect to any month of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such month.

(D) The term "Secretary concerned" means—

(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

(ii) the Secretary of a military department, with respect to matters concerning that military department.

(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) IN GENERAL.—(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Undefinitized contractual actions: restrictions

"(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless—

"(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

"(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

"(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

"(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

"(b) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(2) If a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

"(1) the reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

"(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

"(g) DEFINITION.—In this section, the term 'undefinitized contractual action' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Undefinitized contractual actions: restrictions.".

(2) EFFECTIVE DATE.—Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 30-day period beginning on the date of the enactment of this Act.

SEC. 927. DEFENSE ACQUISITION CORPS.

(a) IN GENERAL.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 83 the following new chapter:

"CHAPTER 84—DEFENSE ACQUISITION CORPS

"Sec.
"1611. Establishment.
"1612. Appointments.

"§ 1611. Establishment

"(a) ESTABLISHMENT.—There is in the Department of Defense a Defense Acquisition Corps consisting of acquisition-related positions in the Office of the Secretary of Defense, the military departments, and the defense agencies specified in regulations prescribed by the Secretary of Defense. The head of the Defense Acquisition Corps is the Under Secretary of Defense for Acquisition.

"(b) NUMBER.—The number of Defense Acquisition Corps positions in a military department shall be determined by the Secretary of Defense.

"§ 1612. Appointments

"The Secretary of Defense shall make appointments to the Defense Acquisition Corps from the best-qualified military personnel. The qualifications of such personnel shall be established based on levels of education, experience, and training and performance on examinations.

(b) COMPENSATION AND PERSONNEL MANAGEMENT INITIATIVE.—

(1) IN GENERAL.—The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in the Defense Acquisition Corps.

(2) REPORT.—The Secretary shall submit to Congress a report describing the plan developed as required by paragraph (1) not later than April 15, 1987.

(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of such title and at the beginning of part II of such subtitle are each amended by inserting after the item relating to chapter 83 the following new item:

"84. Defense Acquisition Corps ..... 1611".

SEC. 928. DEFENSE ACQUISITION UNIVERSITY.

(a) ESTABLISHMENT.—The Secretary of Defense shall establish by regulation a Defense Acquisition University that includes acquisition-related defense schools in existence on the date of the enactment of this Act.

(b) REGULATIONS.—The regulations establishing the Defense Acquisition University shall include the following:

(1) ACQUISITION SPECIALTIES.—Provision for separate schools within the University with respect to various acquisition specialties, including contracting, logistics, quality, program management, systems engineering, production, and manufacturing.

(2) ADMISSION STANDARDS.—Standards and procedures for admission to the University.

(3) CURRICULUM REQUIREMENT.—A requirement that each student at the University successfully complete a central curriculum of contracting and acquisition methodology.

(4) ASSOCIATED PROGRAMS.—Provision for the education of members of the Defense Acquisition Corps through programs offered in conjunction with or in lieu of attendance at the University.

SEC. 929. BUDGETING FOR DEFENSE INFLATION.

(a) IN GENERAL.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§2214. Budgeting and accounting for inflation

"(a) INFLATION IN DEFENSE BUDGETING.—In preparing the budget of the Department of Defense to be included in the budget the President submits to Congress under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall set out separately for each budget account the portion of the amount requested for that account that is required to offset estimated inflation.

"(b) LIMITATION ON AN AMOUNT REQUESTED TO OFFSET ESTIMATED INFLATION.—The total amount requested in such budget as required to offset estimated inflation on purchases of property and services by the Department of Defense (other than purchases of fuel and foreign currency and amounts requested for pay and retirement benefits) may not exceed the amount that would be required to offset inflation on such purchases were inflation to be estimated at the rates projected in the President's budget for the gross national product deflator.

"(c) COMPARISONS TO PRIOR FISCAL YEARS.—In preparing such budget, the Secretary shall set out separately for each budget account a comparison, for the fiscal year during which the budget is submitted and the most recently completed fiscal year, of the portions of the amounts appropriated for such accounts that were re-

quired and are currently estimated to be required to offset inflation.

"(d) IDENTIFICATION OF INFLATION INDEXES.—If the amount required to offset inflation for any budget account in any fiscal year shown in such budget (other than purchases and amounts excepted in subsection (b)) is based on actual or projected rates of inflation different than the actual or projected rates for the gross national product deflator set forth in such budget, the Secretary shall include in the budget a description of the inflation index used and a justification for its use, together with an estimate of the amount required to offset inflation for such account using the actual and projected rates for the gross national product deflator set forth in such budget.

"(e) PROGRAM ADJUSTMENTS.—If any program adjustment is proposed to or made by Congress with respect to the amount requested or made available for any budget account, the Secretary shall identify the effect of such adjustment on that portion of such amount that was required to offset inflation.

"(f) INFLATION FUND.—(1) There is established in the Treasury a fund to be known as the 'Defense Inflation Fund'. The fund shall be administered by the Secretary of Defense. As part of the budget of the Department of Defense to be included in the President's budget submitted to Congress, the Secretary shall report—

"(A) the balance then in the fund; and

"(B) the amounts estimated to be paid from the fund in offset inflation in each budgetary account.

"(2) Amounts appropriated for a fiscal year to cover amounts required to offset inflation in major defense acquisition programs shall be appropriated to the fund.

"(3) Subject to paragraph (4), amounts in the fund shall be used by the Secretary of Defense without fiscal year limitation to meet costs for inflation—

"(A) under contracts subject to section 2408 of this title, to the extent that those costs are authorized to be paid by contract provisions required by that section; and

"(B) for that portion of spending for major defense acquisition programs that is not made under contracts subject to section 2408 of this title, in accordance with procedures approved by the Secretary of Defense.

"(4) Amounts in the fund may not be used to meet the costs of changes in contract prices due to changes in the specification of the property or services being purchased.

"(5) In this subsection, the term 'major defense acquisition program' means a Department of Defense procurement program—

(A) that is designated by the Secretary of Defense as a major defense acquisition program; or

(B) that is estimated by the Secretary of Defense to require an eventual total expenditure for procurement of more than $1,000,000,000 (based on fiscal year 1980 constant dollars).".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2214. Budgeting and accounting for inflation.".

(b) EFFECTIVE DATE.—Section 2214 of title 10, United States Code, as added by subsection (a), shall take effect with respect to fiscal year 1988.

SEC. 930. INFLATION ADJUSTMENT CLAUSES IN MAJOR PROCUREMENT CONTRACTS.

(a) CONTRACT CLAUSE REQUIRED.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Major procurement contracts: economic price adjustment clauses

"(a) REQUIRED CONTRACT CLAUSES.—The Secretary of Defense shall require that each major procurement contract include an economic price adjustment clause providing for adjustments in contract prices to compensate for inflation over the life of the contract.

"(b) LIMITATIONS.—An economic price adjustment clause included in a contract pursuant to subsection (a)—

"(1) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases, or wages paid, by the contractor constitute more than 20 percent of total purchases or wages paid;

"(2) may not be based on an index or indices measuring inflation for a sector of the economy in which purchases for national security or military purposes, or wages paid by contractors with the Department of Defense or their subcontractors, are predominant, unless the Committees on Armed Services of the Senate and House of Representatives have been notified in writing of a proposal to base a clause on such an index or indices and 30 days of continuous session of Congress have expired following the date such notice is received; and

"(3) may not permit to be included as inflation under the contract a change in contract prices due to changes in the specifications of the property or service being purchased, except that if any such change in prices becomes effective, the contract may provide for adjustment in the change in price to compensate for inflation over the remaining life of the contract.

"(c) DEFINITION.—In this section, the term 'major procurement contract' means a contract (other than a cost reimbursement contract) for the purchase of property or services awarded after using procedures other than sealed bid procedures which is performable over a period greater than two years and which—

"(1) is a prime contract under a major defense acquisition program for the purposes of section 2214 of this title; or

"(2) is an associate or Government-furnished equipment contract under such a major defense acquisition program which is one of the six largest contracts under such program in dollar amount and which is for an amount in excess of $2,000,000.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Major procurement contracts: economic price adjustment clauses.".

(b) EFFECTIVE DATE.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts en-

tered into after the end of the 180-day period beginning on the date of the enactment of this Act.

SEC. 931. GAO REPORT ON IMPLEMENTATION OF DEFENSE BUDGETING FOR INFLATION.

The Comptroller General shall periodically report to Congress on implementation by the Department of Defense of the requirements of sections 2214 and 2408 of title 10, United States Code, as added by the amendments made by sections 936(a) and 937(a). Each such report shall include any recommendations of the Comptroller General for further legislative action.

SEC. 932. GAO REPORT ON DEFENSE FINANCIAL MANAGEMENT SYSTEM.

(a) REPORT.—The Comptroller General shall submit to Congress a report setting forth a proposed financial management system for the Department of Defense. The proposed financial management system shall be designed to reconcile—

(1) funds appropriated or otherwise made available to the Department of Defense, with

(2) funds obligated by the Department.

(b) DEADLINE FOR REPORT.—The report required by subsection (a) shall be submitted not later than the end of the six-month period beginning on the date of the enactment of this Act.

SEC. 933. CODIFICATION OF REQUIREMENT FOR PERIODIC REPORTS ON UNOBLIGATED BALANCES.

(a) PERIODIC REPORTS ON UNOBLIGATED BALANCES.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2215. Reports on unobligated balances

"(a) REQUIRED REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives reports (at the times specified under subsection (d)) containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

"(b) MATTERS TO BE INCLUDED.—Each report under subsection (a) shall include set forth separately for each account estimates of amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) UNANTICIPATED COST INCREASES.—Each such report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) SUBMISSION OF REPORTS.—A report under this section shall be submitted to Congress each year—

"(1) with the President's budget for the next fiscal year;

"(2) with the April Budget Update; and

"(3) with the Mid-Session Budget Review.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2215. Reports on unobligated balances.".

(b) REPEAL OF SOURCE LAW.—Section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is repealed.

SEC. 934. CERTIFICATION OF ALLOWABLE INDIRECT COSTS.

(a) STRENGTHENING OF CERTIFICATION REQUIREMENT.—Subsection (h) of section 2324 of title 10, United States Code, is amended to read as follows:

"(h)(1) A contractor that submits a proposal for interim or final settlement of indirect costs applicable to a covered contract shall be required to certify that all indirect costs included in the proposal are allowable. Any such certification shall be in the form prescribed in paragraph (2).

"(2) The certification required by paragraph (1) is as follows:

" 'CERTIFICATE OF OVERHEAD COSTS

" 'This is to certify that:

" '1. I have reviewed the indirect cost proposal submitted with this certification.

" '2. All costs included in this proposal to establish (billing) (final indirect cost rates) for identify period are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts,

" '3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs (contributions and donations), entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill.

" '4. All costs included in this proposal benefit the Department of Defense and are demonstrably related to or necessary for the performance of each Department of Defense contract covered by the proposal.

" 'I declare under penalty of perjury that the foregoing is true and correct.'.

"(3) Such certification shall identify the contractor and be signed by the chief financial officer of the contractor.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts entered into after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 935. COMPETITIVE PROTOTYPE STRATEGY REQUIREMENT FOR MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ESTABLISHMENT OF REQUIREMENT.—

(1) IN GENERAL.—Chapter 139 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2362. Competitive prototype strategy requirement for major defense acquisition programs

"(a) COMPETITIVE PROTOTYPE STRATEGY REQUIREMENT.—Except as provided in subsection (c), the Secretary of Defense shall require the use of a competitive prototype program strategy in the development of a major weapons system (or a subsystem of such system).

"(b) QUALIFYING STRATEGIES.—A strategy qualifies as a competitive prototype strategy if it—

"(1) requires that contracts be entered into with not less than two contractors, using the same combat performance requirements, for the competitive design and manufacture of a prototype system or subsystem for operational test and evaluation;

"(2) requires that all systems or subsystems developed under contracts described in paragraph (1) be tested in a comparative side-by-side test that is designed to—

"(A) reproduce combat conditions; and

"(B) determine which system or subsystem is most effective under such conditions; and

"(3) requires that each contractor that develops a prototype system or subsystem, before the testing described in subparagraph (B) is begun, submit—

"(A) bids for full-scale engineering development;

"(B) production estimates; and

"(C) if appropriate, fixed-price or not-to-exceed production price options.

"(c) EXCEPTION.—Subsection (a) shall not apply to the development of a major weapons system (or subsystem of such system) after—

"(1) the Secretary submits to Congress—

"(A) written notification that use of a competitive prototype program strategy is not practicable with respect to such system or subsystem; and

"(B) a report that fully explains why use of such a strategy is not practicable, including—

"(i) detailed cost estimates comparing the total program cost of the competitive prototype strategy with the total program cost of the non-competitive prototype strategy; and

"(ii) a demonstration that the total program cost of the competitive prototype strategy is significantly greater than the total program cost of the non-competitive prototype strategy; and

"(2) 30 days of continuous session of Congress elapse after the Secretary submits the notification and report required by paragraph (1).

"(c) DEFINITIONS.—In this section:

"(1) MAJOR WEAPONS SYSTEM.—The term 'major weapons system' means a major weapons system that is acquired under a program that is a major defense acquisition program.

"(2) MAJOR DEFENSE ACQUISITION PROGRAM.—The term 'major defense acquisition program' means a Department of Defense acquisition program that—

"(A) is not a highly sensitive classified program (as determined by the Secretary of Defense); and

"(B) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $200,000,000 (based on fiscal year 1980 constant dollars).".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2362. Competitive prototype strategy requirement for major defense acquisition programs.".

(b) EFFECTIVE DATE.—Section 2362 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major weapons systems (as defined in subsection (c)(1) of such section) that enter full-scale engineering development after September 30, 1986.

SEC. 936. RELEASE OF TECHNICAL DATA.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2326. Release of technical data

"(a) IN GENERAL.—

"(1) RELEASE OF DATA.—The Secretary of Defense shall, if required to release technical data under section 552 of title 5, release technical data to a person requesting such a release if such person pays all costs reasonably attributable to responding to such request, including reasonable charges for the costs of services of agency personnel relating to—

"(A) locating the technical data requested;

"(B) the review of such technical data to determine whether other restrictions apply; and

"(C) duplication and other processing charges.

"(2) REGULATIONS.—The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

"(b) DISPOSITION OF COSTS.—Amounts collected under this section shall be retained by the collecting agency and shall be used to reimburse the costs incurred in complying with requests for technical data.

"(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in addition to costs under section 552 of title 5 if—

"(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States;

"(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

"(3) the Secretary determines, in accordance with section 552(a)(4)(A) of title 5, that such a waiver is in the interests of the United States.

"(d) TECHNICAL DATA.—In this section, the term 'technical data' means formulae, designs, drawings, blueprints, technical manuals, or computer software.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2326. Release of technical data.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 937. RELEASE OF TECHNICAL DATA.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2327. Release of technical data

"(a) IN GENERAL.—

"(1) RELEASE OF DATA.—The Secretary of Defense shall, if required to release technical data under section 552 of title 5, release technical data to a person requesting such a release if such person pays all costs reasonably attributable to responding to such request, including reasonable charges for the costs of services of agency personnel relating to—

"(A) locating the technical data requested;

"(B) the review of such technical data to determine whether other restrictions apply; and

"(C) duplication and other processing charges.

"(2) REGULATIONS.—The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

"(b) DISPOSITION OF COSTS.—Amounts collected under this section shall be retained by the collecting agency and shall be used to reimburse the costs incurred in complying with requests for technical data.

"(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in addition to costs under section 552 of title 5 if—

"(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States;

"(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

"(3) the Secretary determines, in accordance with section 552(a)(4)(A) of title 5, that such a waiver is in the interests of the United States.

"(d) TECHNICAL DATA.—In this section, the term 'technical data' means formulae, designs, drawings, blueprints, technical manuals, or computer software.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2327. Release of technical data.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 938. THRESHOLDS FOR CERTAIN REQUIREMENTS RELATING TO SMALL PURCHASES.

(a) NOTICE THRESHOLDS.—

(1) SMALL BUSINESS ACT.—Subparagraph (A) of section 8(e)(1) of the Small Business Act (15 U.S.C. 637(e)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(2) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Subparagraph (A) of section 18(a)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(A)) is amended—

(A) by striking out "$10,000" each place such term appears in subparagraph (A) and inserting in lieu thereof "$25,000";

(B) by striking out "or" at the end of clause (i);

(C) by striking out the comma at the end of clause (ii) and inserting in lieu thereof "; or"; and

(D) by inserting after clause (ii) the following new clause:

"(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that not less than two offers will be received from responsive and responsible offerors,".

(b) SMALL BUSINESS SET-ASIDES.—The first sentence of subsection (j) of section 15 of the Small Business Act (15 U.S.C. 644(j)) is amended by striking out "$10,000" and inserting in lieu thereof "25,000".

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